

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	

**THE TELECOMMUNICATIONS REGULATORY BOARD
OF PUERTO RICO COMMENTS IN SUPPORT OF
COMMENTS FILED BY THE PUERTO RICO TELEPHONE COMPANY, INC.**

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	2
II.	BACKGROUND	2
III.	THE FACTS SHOW THAT PUERTO RICO DOES NOT HAVE REASONABLY COMPARABLE TELECOMMUNICATIONS AND INFORMATION SERVICES AS THOSE ON THE MAINLAND	5
IV.	THE ACT UNAMBIGUOUSLY ORDERS THE COMMISSION TO ENSURE THAT INSULAR AREAS HAVE ACCESS TO TELECOMMUNICATIONS AND INFORMATION SERVICES THAT ARE REASONABLY COMPARABLE TO THOSE IN URBAN AREAS	6
V.	ADOPTION OF THE CAM WILL EXACERBATE THE EXISTING DIGITAL DIVIDE BETWEEN PUERTO RICO AND THE CONTINENTAL UNITED STATES	9
VI.	CONCLUSION.....	12

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The Telecommunications Regulatory Board of Puerto Rico (“Board”), respectfully submits these comments in support of the comments (“PRTC Comments”) filed by the Puerto Rico Telephone Company, Inc.’s (“PRTC”) regarding the Federal Communications Commission (“Commission”) Wireline Competition Bureau’s (“Bureau”) Public Notice announcing the availability of the Connect America Fund Phase II Cost Model (“CAM”).¹ The Board has carefully reviewed the PRTC Comments,² as well as the White Paper of Puerto Rico Telephone Company, Inc. on Legal and Policy Issues with Applying CACM to Insular Areas (“PRTC White Paper”).³

I. INTRODUCTION AND SUMMARY

As the statutorily-designated agency in charge of regulating telecommunications and information services in Puerto Rico, and with the statutory mandate from the Puerto Rico

¹ See *Wireline Competition Bureau Announces Availability of Version 3.2 of the Connect America Funder Phase II Cost Model, and Illustrative Results; Seeks Comment on Several Modifications for Non-contiguous Areas*, Public Notice, WC Docket No. 10-90, DA 13-1846 (rel. Aug. 29, 2013 WCB) (“Notice”).

² Comments of Puerto Rico Telephone Company, Inc., WC Docket Nos. 10-90 (dated September 12, 2013).

³ White Paper of Puerto Rico Telephone Company, Inc. on Legal and Policy Issues with Applying the CACM to Insular Areas, WC Docket Nos. 10-90; WC Docket No. 05-337 (dated July 17, 2013).

General Assembly of assuring “Puerto Rico of the same telecommunication and information privileges that United States citizens enjoy,” the Board possesses unique knowledge and has a particular perspective on the PRTC Comments and the PRTC White Paper. For those reasons, the Board submits these comments in support.

Under the clear congressional mandate of the Communications Act (“the Act”), insular areas warrant special consideration so that their residents can have access to reasonably comparable telecommunications and information services to those available in mainland urban areas. To comply with Congress’s unequivocal instruction, the CAM must take into account the unique challenges faced by Puerto Rico. Because the proposed CAM does not adequately address these unique challenges and would severely reduce support to an already underserved population, it fails to comply with the Commission’s congressional mandate. If the CAM were adopted, many residents of Puerto Rico would never receive reasonably comparable services to those available in urban areas and the digital divide that already exists between Puerto Rico and the continental United States would be impermissibly widened.

II. BACKGROUND

In 1996, recognizing the fundamental changes in telecommunications regulation occurring in the United States, the Puerto Rico General Assembly enacted the Puerto Rico Telecommunications Act to establish the Board and charge it with protecting the residents of Puerto Rico and ensuring a pro-competitive telecommunications market.⁴ Law 213 makes it the public policy to:

- establish specific, predictable, and sufficient support mechanisms to preserve and develop universal service.

⁴ 27 L.P.R.A. § 265 *et seq.* (“Law 213”)

- promote the investment of capital in the development of telecommunications infrastructure.
- ensure the availability of the broadest range of competitive possibilities in the offering of telecommunications services and facilities.
- promote competition and use the market forces as key factors in determining the prices, terms, availability and conditions of the service.
- give access to telecommunications services that are reasonably comparable to those provided in urban areas to consumers throughout the island, including low-income persons and those who reside in rural areas or in areas where access to such services is costly.
- guarantee the enjoyment of the service offered, without fear of unreasonable interruptions or interference.

Since its creation, the Board has undertaken major initiatives to discharge its statutory mandate and has conducted multiple proceedings related to the protection of a competitive environment in Puerto Rico.

The Board's authority to act for the benefit of the consumers of Puerto Rico has been confirmed by numerous courts.⁵ During its 14-year history, the Board has overseen and managed a transition from a telecommunications market dominated by a government-owned monopoly to a market characterized by competition and increasing sensitivity to the right of consumers to expect consistent high-quality service. Since the creation of the Board, PRTC, once a government-owned carrier, has been privatized. Since privatization, progress has been made on improving the quality of service.

In addition to acting at the Commonwealth level, the Board has repeatedly acted to protect the residents of Puerto Rico by participating in proceedings at the Commission. For

⁵ See, e.g., *WorldNet Telecommunications, Inc. v. Puerto Rico Tel. Co.*, 497 F.3d 1 (1st Cir. 2007) (upholding Board's authority to impose measures to improve overall performance); *Puerto Rico Tele. v. Telecommunications Reg. Bd.*, 189 F.3d 1, 7 (1st Cir. 1999) (confirming the Board's authority to act for the benefit of consumers in Puerto Rico).

example, in WT Docket No. 06-113, it submitted comments on the proposed transfer of PRTC to America Movil, asking the Commission to make sure that America Movil's commitment to invest in Puerto Rico was real, quantifiable and verifiable.⁶ The Commission thereafter approved the transfer, but required that America Movil invest \$1 billion over five years to improve service in Puerto Rico.⁷ The Commission also required America Movil to provide "a written report to the Commission on an annual basis describing the progress it has made in deploying infrastructure used to provide basic telephone and broadband services in Puerto Rico. This report, which shall include quantifiable and verifiable data shall be due to the Commission on December 31 of each calendar year." *Id.*

The Board has also submitted comments in the Commission's docket examining whether Puerto Rico warranted an insular mechanism⁸ and in this docket, providing comments on model design and data inputs for Phase II of the Connect America Fund.⁹

III. THE FACTS SHOW THAT PUERTO RICO DOES NOT HAVE REASONABLY COMPARABLE TELECOMMUNICATIONS AND INFORMATION SERVICES AS THOSE ON THE MAINLAND

Puerto Rico has extremely low broadband penetration rates; high costs imposed by its geography; and an exceptionally challenging economic situation. "Many in Puerto Rico still lack access to basic telephone and Internet services that the rest of the U.S. is able to take for

⁶ See July 14, 2006 Petition to Deny.

⁷ *Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, 22 FCC Rcd 6195 (2007).

⁸ See October, 9, 2008 letter, May 26, 2006 Reply Comments, April 15, 2005 letter in Federal-State Joint Board on Universal Service, High Cost Universal Service Support (CC Docket No. 96-45 and WC Docket No. 05-337).

⁹ See *Comments of the Telecommunications Regulatory Board Of Puerto Rico* WC Docket No. 10-90, July 9, 2012.

granted.”¹⁰ The Eighth Broadband Progress Report, released by the Commission on August 21, 2012, shows that 51.6% of households in Puerto Rico lack access to high-speed Internet connections, compared to only 6.0% in the United States as a whole. Moreover, Puerto Rico has 25.4% of its population living in rural areas compared to 19.3% in the United States as whole and median household income of \$19,370 compared to \$51,144 for the United States as a whole¹¹ – both of which are demonstrated factors that inhibit the adoption of broadband. As detailed in the Eighth Broadband Progress Report, the average adoption rate for households in the lowest quintile of household income is 16.6% versus 41.0% for households in the highest quintile. Further “the broadband deployment gap remains significant as approximately 19 million Americans lack access to fixed broadband meeting the speed benchmark and *approximately 76 percent of these Americas reside in rural areas*. Americans residing on Tribal lands and in the *U.S. Territories generally have even less access to fixed broadband* meeting the speed benchmark.”¹²

Additionally, as the Board previously showed in its submissions to the Commission, because Puerto Rico is an island, virtually all of the necessary supplies and materials must be transported in, adding further costs and taxes to the cost of equipment, storage, tools, parts and labor. This fact is compounded by the island’s topography and limited basic infrastructure, all of which make a network buildout a time consuming and expensive exercise. This reality is exacerbated by the economic situation in Puerto Rico. Residents of Puerto Rico have a

¹⁰ Comments of Minority Media and Telecommunications Council with the Commission, dated March 25, 2010.

¹¹ Amanda Noss, Household Income for States: 2010 and 2011, American Community Survey Briefs, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, Issued September 2012.

¹² Eighth Broadband Progress Report, GN Docket No. 11-121, Released August 21, 2012, at ¶ 44.

significantly lower per capita income than any state in the United States. According to the last census, the average per capita income in Puerto Rico was less than \$8,200. This was less than half the per capita income of the lowest U.S. state (Mississippi: \$15,853). The lack of disposable income, together with the high cost of living dictated by the island's geography, combine to place significant pressure on carriers and regulators alike.

IV. THE ACT UNAMBIGUOUSLY ORDERS THE COMMISSION TO ENSURE THAT INSULAR AREAS HAVE ACCESS TO TELECOMMUNICATIONS AND INFORMATION SERVICES THAT ARE REASONABLY COMPARABLE TO THOSE IN URBAN AREAS

The Act mandates that insular areas have access to telecommunications and information services that are reasonably comparable to those in urban areas.¹³ The Commission has expressed its agreement with this position, stating that “Congress intended that consumers in insular areas, as well as in rural and high-cost areas, have access to affordable telecommunications and information services.”¹⁴ Congress’s clear intent was to level the playing field and ensure that residents of all areas enjoyed access to reasonably comparable services. For this reason, PRTC is correct that the Commission has a duty “to ensure reasonably comparable rates and services for customers in insular areas.”¹⁵

If the CAM were implemented, the Commission would not satisfy Congress’s instruction that all areas (rural, insular and high cost) warrant special consideration with respect to Puerto Rico because, as PRTC demonstrates, “the proposed CAM does not adequately address the needs of insular areas.”¹⁶

¹³ 47 U.S.C. § 254(b).

¹⁴ 2005 NPRM at ¶ 33.

¹⁵ PRTC Comments, dated September 12, 2013, at 7-8.

¹⁶ PRTC Comments, dated September 12, 2013, at 24.

V. ADOPTION OF THE CAM WILL EXACERBATE THE EXISTING DIGITAL DIVIDE BETWEEN PUERTO RICO AND THE CONTINENTAL UNITED STATES

As PRTC showed, adoption of the CAM for Puerto Rico not only means that thousands of residents will not have access to the broadband services that residents of the United States take for granted, but, if not corrected, would further widen the digital divide that currently exists between Puerto Rico and the continental United States. The CAM, as proposed, would reduce support for Puerto Rico from more than \$36 million today to less than \$3.68 million. It is unrealistic to assume that *reducing* funding by 90% could have the contrary effect of *increasing* broadband deployment in Puerto Rico. In addition, the simultaneous proposed increase in funding to the mainland can only exacerbate the disparity in access to high speed broadband between Puerto Rico and the United States as a whole – a disparity that is already stark, with access to high speed broadband currently over 8 times higher in the United States as a whole versus Puerto Rico.

On March 16, 2010, the Commission sent the National Broadband Plan to Congress. In an accompanying press release issued the same day, Commission Chairman Genachowski stated “The National Broadband Plan is a 21st century roadmap to spur economic growth and investment, create jobs, educate our children, protect our citizens, and engage in our democracy. It’s an action plan, and action is necessary to meet the challenges of global competitiveness, and harness the power of broadband to help address so many vital national issues.”¹⁷ While these sentiments are encouraging, without the necessary infrastructure, which Puerto Rico does not currently possess, the promise and benefit of broadband will not reach its residents.

¹⁷ http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296880A1.doc

While those in the continental United States will increasingly use broadband to “spur economic growth and investment, create jobs, educate our children, protect our citizens, and engage in our democracy,” the residents of Puerto Rico will continue to be left behind because of a lack of basic infrastructure.

VIII. CONCLUSION

The Commission has noted that basic and advanced telecommunications services are “a fundamental necessity in modern society.”¹⁸ The residents of Puerto Rico must have access to reasonably comparable telecommunications and information services as those on the mainland, and the Commission must ensure that the digital divide is narrowed, not widened. For these reasons, the Board supports PRTC’s Comments and White Paper.

Respectfully submitted,

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¹⁸ *Federal State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd. 12208, ¶3 (2000).